WHERE DO WE FIT IN?:
AN EXPLANATION OF THE PROVINCES’ PLACE IN THE CANADA-US
RELATIONSHIP AND THEIR INVOLVEMENT IN RE-NEGOTIATING NAFTA

by

Chelsea Rae Lehner

B.A., The University of Saskatchewan, 2016

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

in
THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES
(Political Science)

THE UNIVERSITY OF BRITISH COLUMBIA
(Vancouver)

August 2017

© Chelsea Rae Lehner, 2017
Abstract

The purpose of this paper is to explore the place of the provinces in the Canada-United States relationship by looking at the renegotiation of the North American Free Trade Agreement. In order to understand the current Canada-US relationship, a brief overview of the history of the relationship will be presented as well as various ways to define the relationship. This paper seeks to explain the constitutional place of the provinces in this complex relationship. The Canadian economy relies on natural resources, a matter of provincial jurisdiction. The provinces feel this earns them a place at the negotiating table. This paper argues the provinces will not have a seat at the negotiating table with the federal government, as occurred during the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) negotiations. The provinces are motivated to try and recreate a CETA-like negotiation environment, which would get each province to the negotiation table. The provinces want to lobby the US federal government to create this environment because the US has more power in the Canada-US trade relationship. The personal relationships various Premiers have created will help to increase their individual provincial bargaining positions. There have been varying levels of provincial involvement in preparing for NAFTA negotiations. In order for the Canadian government to present an image of unity to the US, the provinces will not have direct involvement but will instead be consulted. This paper will argue the level of provincial involvement during CETA was an isolated example. All ten provinces at the table, vying for their own self-interests at the expense of other provinces, would harm the country as a whole.
Lay Summary

How involved will the provinces be when NAFTA is re-negotiated? What is the provinces’ role in the complex Canada-US relationship? This thesis aims to answer these questions. I argue that based on the Canadian Constitution the provinces do have a place in negotiating international trade agreements. However, in order for the Canadian federal government to present the US with an image of Canadian unity, only the federal government will be present at the negotiating table. If all ten provinces were at the table they would be making concessions at the expense of other provinces, which would result in tensions between the provinces. The provinces will want similar positions that were given to them during CETA but the federal government will not allow it. The federal government will not allow this because Canada is the weaker partner in the Canada-US relationship. Canada is not in a position to make extravagant demands.
Preface

All parts of this thesis are original intellectual product of the author.

There is no publication for the work presented in this thesis.
Table of Contents

Abstract ........................................................................................................................................ ii
Lay Summary ................................................................................................................................... iii
Preface .............................................................................................................................................. iv
Table of Contents .......................................................................................................................... v
List of Abbreviations ...................................................................................................................... vii
Acknowledgements ......................................................................................................................... viii
Dedication ......................................................................................................................................... ix
Chapter 1: Introduction ................................................................................................................... 1
Chapter 2: Background .................................................................................................................... 4
  2.1 A History of the Canada US Relationship ........................................................................... 4
  2.2 Defining the Canada US Relationship ................................................................................. 8
Chapter 3: Role of the Provinces in International Trade .............................................................. 11
Chapter 4: Provincial Engagement in International Trade ........................................................ 17
  4.1 Quebec ..................................................................................................................................... 17
  4.2 Ontario .................................................................................................................................... 20
  4.3 Resource Rich Provinces ...................................................................................................... 23
    4.3.1 British Columbia ............................................................................................................. 23
    4.3.2 Alberta .......................................................................................................................... 25
Chapter 5: Analysis ........................................................................................................................ 27
  5.1 Mechanisms for Provincial Involvement: C-Trade ............................................................. 31
  5.2 CETA: Lessons for NAFTA ................................................................................................. 33
5.3 What's Next? ................................................................. 35

Chapter 6: Conclusion .................................................................................. 37

Bibliography .................................................................................................... 39
List of Abbreviations

British Columbia (BC)
Canada-European Union Comprehensive Economic and Trade Agreement (CETA)
Canada-United States Free Trade Agreement (CUSFTA)
Canadian Dollar (CAD)
Continuing Committee for Trade Negotiations (CCTN)
Distant Early Warning (DEW)
European Union (EU)
Federal-Provincial-Territorial Committee on Trade (C-Trade)
General Agreement on Tariffs and Trade (GATT)
Judicial Committee of the Privy Council (JCPC)
National Governors Association (NGA)
North American Aerospace Defense Command (NORAD)
North American Free Trade Agreement (NAFTA)
United States (US)
United States Dollar (USD)
United States Trade Representative (USTR)
September 11th, 2001 (9/11)
Trade and Investment Enhancement Agreement (TIEA)
Acknowledgements

I would like to thank my supervisor, Dr. Gerald Baier, for his support and suggestions. My thesis benefited from his in-depth knowledge. I would also like to thank the staff and faculty in the Political Science Department at UBC for creating a wonderful work and study environment.

A special thank you to Duncan, my parents, and sister, for always being there. To my friends and colleagues at UBC, thank you for making this year an unforgettable one.
Dedication

To Dad, Mom, Josie, and Duncan, who have always been there.
Chapter 1: Introduction

The relationship between Canada and the United States (US) has been defined and shaped by shared borders, economic interests, and mutual security. The relationship dynamic can either be seen as equal or hierarchical, or defined as ‘close,’ ‘partners,’ or ‘allies’. In order to understand the current relationship, the shared history between these two countries must be understood. Canada and the US started off as foes, and a main driving factor for Canadian Confederation was the threat of American invasion. Since 1867, this relationship has become more cordial, and modern relations can be traced to the end of the Second World War.

Canada and the United States geographically cover the majority of North America and share the longest undefended border in the world. Every day hundreds of thousands of people and a billion dollars worth of goods cross the 8,891-kilometer border between Canada and the US (US Department of State 2017). Today, Canada and the US share more than a continent; they are close economic and military allies. The US is the more dominant and powerful member of the relationship. This allows the US the ability to dictate how negotiations will transpire.

This paper will evaluate the provinces’ role in the Canada-US relationship by looking at the renegotiation of the North American Free Trade Agreement (NAFTA). The provinces’ role will be evaluated through in-depth analysis of each province’s relationship with the federal government and by their place within the country. The renegotiation of the NAFTA was selected due to the fact that it is a contemporary example that will show the intricacies of the provinces’ position in the relationship. In order to understand this complex relationship, first provincial and federal jurisdiction over trade and foreign affairs must be considered. This will be explored by looking at the Canadian Constitution, important court cases, and the history of provincial involvement in trade negotiations. The current mechanism for provincial involvement, C-Trade,
has no constitutional basis but is a relatively routinized, expected, part of negotiating international trade agreements. This paper will look at four key provinces that rely on the US for survival: Quebec, Ontario, British Columbia (BC), and Alberta. These provinces were selected for the various levels of clout they carry in the federation, their varying levels of lobbying key US legislators, the fact that either their exports or imports (or both) depend on the US, and finally because they mostly trade natural resources. The selection criteria will allow for an in-depth analysis if not a complete picture of all the provinces.

This paper will seek to hypothesize how involved the provinces will be in renegotiating NAFTA and what position the various provinces will take. It will be clearly established that the provinces have a lot to lose in the NAFTA renegotiations. The selected provinces are extremely dependent on the US for trade. This is why certain Premiers have been lobbying key US federal legislators so they can create connections that will in turn allow them to recreate a Canada-European Union Comprehensive Economic and Trade Agreement (CETA) like negotiating environment. Section one will provide an overview of the transformation of the Canada-US relationship from foe to ally and focus on the shared history, geography, and economics of the two countries. Section two will evaluate previous scholars’ attempts to define and categorize the Canada-US relationship. Section three will present a literature review and history of provincial involvement in international trade negotiations. Section four presents the four provincial profiles of Quebec, Ontario, BC, and Alberta. Section five presents an overall analysis of provincial involvement in negotiating NAFTA. This paper argues that the provinces would like to retain the same level of involvement as they had during the CETA negotiations. The involvement of the provinces during the CETA negotiations appears to be an isolated incident and will not be followed during NAFTA. In CETA, the provinces were wanted by the European Union but in
NAFTA, the US executive branch has not expressed any desire to also include the provinces. In renegotiating NAFTA, the US has the power. Based on the history of the Canada-US relationship, the Canadian federal government must ensure they present an image of Canadian unity to ensure the new NAFTA benefits all of Canada and not just certain provinces. However, in order for the federal government to do so, the provinces will not have a seat directly at the negotiating table.
Chapter 2: Background

2.1 A History of the Canada US Relationship

Canada and the US had similar origins as British colonies but very different trajectories. The US broke away rather quickly in a bloody revolutionary war, while Canada parted peacefully and diplomatically. Canadian Confederation had its origins in the American Revolution. It is well known that part of the reason for Confederation was to create a united Canada to protect against an American invasion. This concern over invasion was not unjustified. The 1837 Rebellions, the Fenian Raids of 1860s, and the idea of Manifest Density all lent weight to the fear of invasion (Nossal 2005). The acknowledgement of Canada by the US was cemented in the 1871 Treaty of Washington. This greatly decreased Canadians’ fears they would be invaded by the US. Confederation and the Treaty of Washington had settled fears, but there were still concerns about cultural and economic invasion. Canada’s economic concerns were resolved by Prime Minister John A. Macdonald’s national policy, which solidified east to west trading and thereby increased Canada’s economic independence from north to south trading (which would have strengthened the US’s economy to the detriment of Canada’s economic freedom). Free trade with the US was approached with skepticism as Canadian businesses were concerned Canada would become absorbed in the United States’ economy (Nossal 2005). Cultural anti-Americanism would continue to become a defining feature of Canadian identity over the 20th century.

Following the First World War, Canada began to distance itself from Britain and strengthened their relationship with the US. In 1931, Canada was subject to the Statute of Westminster, which gave former British colonies full sovereignty over their international affairs.
The signing began to cut ties with Great Britain. In turn, ties were strengthened with the US through the Ogdensburg Agreement 1940 and the Hyde Park Agreement 1941. The Canada-US relationship turned to friendship during the Second World War. Following the War, Canada saw tremendous increase in trade with the US, which benefited the Canadian economy but also increased Canadian dependence on the US. However, the Cold War brought a more cautious and cooperative relationship. The US recognized Canada’s strategic position as a buffer between itself and the Soviet Union and, to protect themselves, created many joint programs in shared defense: the North American Aerospace Defense Command (NORAD), the Canada-US defense production sharing program, and the Distant Early Warning (DEW) line. There were also many events that caused tensions in the relationship during the Cold War, including the Cuban missile crisis, the Vietnam War, and the Suez Crisis. These events caused Canada to question the US’s actions but the need for “a close relationship to ensure stability and prosperity…” against the Soviet threat was greater (Edwardson 2003, 133).

The 1980 federal election saw a push for tariff-free trade with the US in order to access their large market. Prior to this, Prime Minister Pierre Elliot Trudeau tried to diversify trade to strengthen Canadian identity and avoid deeper integration with the US. However, in order for the Canadian economy to continue to grow it needed access to larger markets. The Royal Commission on the Economic Union and Development Prospects for Canada, which was chaired by Donald S. MacDonald and commissioned by Prime Minister Pierre Trudeau in 1982, concluded in 1985, that increasing trade with the US would benefit the Canadian economy. This helped pave the way for the Canada-US Free Trade Agreement (CUSFTA), which came into effect after a fiercely fought election on the issue in 1988. The success of the CUSFTA led to the inclusion of Mexico six years later to create NAFTA. The success of NAFTA was first seen in
2000, when trade increased by $900 billion CAN, which thereby increased from 50% of GDP to 90% of GDP (Hart 2010). This resulted in 70% of GDP being attributed to direct Canada-US trade (Hart 2010). The current levels of day-to-day trade are reflected by the $1.8 billion USD of goods and services that cross the 49th parallel (US Department of State 2017). In addition, about 380,000 people cross the border on a daily basis. The Canada-US trade relationship is by far the largest in the world based on total goods and services traded. In 2015, the value of this trading was $662.7 billion USD (Office of the USTR 2017, April 19). Canada and the US have a deeply integrated trade relationship, which also extends to energy and security (Cameron & Tomlin 2000).

The 21st century relationship has been defined by the War on Terror and refocused bilateral policy towards security. The Canada-US relationship entered a very tense period following the September 11th, 2001 terrorist attacks (9/11). Immediately following the attacks, the United States temporarily closed their borders and prevented everyone and everything from coming in or going out. Canada was forced to re-evaluate its border security with the US so as to strengthen US domestic security. In response to the 9/11 attacks, the US decided to invade Iraq. Canada had to choose to either join the United States in the invasion or risk losing many of the benefits associated with the relationship. Canada did not invade Iraq with the US, but did participate in the military operation in Afghanistan. George W. Bush suggested that Canada’s refusal to go into Iraq tainted the relationship but with the election of President Barack Obama, Canada and the US enjoyed a period of good faith relations (Bow 2008). During the 2016 US Presidential Campaign, then-candidate Donald J. Trump promised his supporters, and by extension Canada and Mexico, that he would re-negotiate NAFTA or the US would withdraw
Once Trump was elected President, he continued to emphasize the need to ensure the American people and their jobs were protected.

The NAFTA is a trilateral international trade agreement between the US, Canada, and Mexico. Over the course of then-candidate Trump’s campaign, it appeared that Mexico was Trump’s main concern. He talked about issues ranging from the US building a wall to deporting illegal immigrants. It was not until President Trump targeted dairy and softwood lumber that Canada appeared to be a concern to the Trump Administration. Canada officially became concerned with President Trump’s desire to renegotiate NAFTA when the official notice to do so was given to Congress on May 18, 2017. These actions by President Trump have forced the Canadian provinces and federal government to start preparing for renegotiating NAFTA.

Based on the shared history, geography, and trade relations, the US and Canada have a very complex relationship. The relationship has changed over the course of history but their histories have been intertwined. Each new phase of the relationship presents new challenges for the respective governments. In approaching a potential new phase a new actor will become more involved, the provinces. The next step will be figuring out where the provinces fit into the Canada-US relationship. The next section of the paper will provide a literature review of the different ways of defining the relationship.
2.2 Defining the Canada-US Relationship

There are many different ways to define the Canada-US relationship. The Government of Canada website labels the relationship as a ‘partnership’ (2017). The US State Department webpage on Canada does not explicitly define the relationship but instead mentions how Canada benefits from the relationship (US Department of State 2017). There are different ways to define the relationship depending on the historical period or the policy area being discussed. There is a general agreement in the literature that the relationship is unequal. Anderson (2013) challenges the consensus by asserting the relationship is more of an equal partnership by using the analogy of a law firm. In this analogy, Canada and the US are equal senior partners and their provinces and states are junior partners. While this could be true when Canada and the US are studied in a vacuum, it is not the case when the relationship is placed within the international system. This is especially apparent when one looks at the economic and military weight of the US and how it dwarfs Canada in comparison. While Canada’s number one importer, exporter, and largest foreign investor is the US, this is not reciprocated. Canada cannot use economic sanctions or military action when there is a disagreement. Neither country wants to damage the relationship beyond repair, but the US does dominate negotiations and always has the leverage power to make Canada do as it pleases. Canada’s continued prosperity depends on economic integration with the US. In the case of negotiations between the two countries, Bow (2009) sees that US officials assume their needs and wants are the same as Canada’s. The US’s preferences and goals dominate the negotiations and most often are followed. This is why the relationship is often defined as asymmetrical, where the relationship is unequal and benefits one more than the other.

Today, the main concern is how to manage the relationship. In evaluating the relationship Bow (2009) focuses on the type of linkages used during diplomatic exchanges between Canada
and the US. He sees the literature as having moved past how to categorize the relationship to a discussion of how to manage the relationship (Bow 2009). While Anderson (2013) does not adhere to the convention of unequal partnership, he does present an interesting discussion on the management of the relationship; specifically, what is the evolving role of the provinces and states. To illustrate the relationship he again uses the analogy of a law firm trying to decide if a lawyer should make partner. Here, the respective federal governments represent the law firm and the provinces and states refer to the lawyers (Anderson 2013). Anderson argues that the provinces are more likely than the states to participate in bilateral negotiations due to the different evolutions of federalism in both countries. Anderson also looks at how provinces and states can assert their views and argues “the decentralized nature of federalism in Canada has resulted in a degree of autonomy for the provinces that has periodically made the shared sense of purpose and commitment to partnership elusive.” (2013, 7) Anderson sees that provincial and state participation in bilateral affairs is useful to negotiations and that the provinces constitutionally have the ability to become more involved while the states will likely be suppressed by the federal government. Since the beginning of the 20th century the provinces ability to be involved in negotiations has increased due to various court decisions.

The interpretation of an asymmetrical relationship, and therefore interdependence, perhaps has the most strength in the military and security policy areas. Barry & Bratt (2008) argue that Canada-US security interdependence rests on a realist view of the international system where self-help is required for the US but does not reflect Canada's reality. Instead, the US protects Canada by acting as a deterrent to other states merely by geographical association. This dependence was most evident during the Cold War. Because of this connection, Canada cannot isolate itself from the US when it comes to security. Canada must think of the US in every
security decision, otherwise they will put their own security at risk. The US is mainly concerned with its own security and this links in with Bow (2009) that the ‘underlings’ of the bureaucracy do not really care about Canada’s needs. Geography is no longer the initial cause for foreign policy decisions; the integrated security measures are a stronger contributing factor to foreign policy decisions.

The deep integration between the two countries can been seen diplomatically, economically, and militarily. This paper agrees with the view that the relationship is very asymmetrical and this influences how Canada approaches any foreign policy decision. Anytime Canada and the US are negotiating, the US has a more powerful position and Canada has a lot more to lose. This paper will next look the role that the provinces have in the Canada-US relationship. Since the creation of the Canada-US Free Trade Agreement the provinces have had a more prominent role in negotiating international trade agreements. In order to fully understand the relationship of Canada-US trade relations, it is important to understand what role the provinces play in international relations and natural resource jurisdiction.
Chapter 3: Role of the Provinces in International Trade

In Canada, the constitution stipulates how the country will be governed and how power will be shared between the different levels of government. In regards to international trade policy and intergovernmental relations there are several important sections of the constitution. The first sections of importance are Sections 91 and 92. These sections lay out the jurisdictions of the federal and provincial legislatures. Section 91 lists the areas of exclusive federal jurisdiction and Section 92 lists the areas of exclusive provincial jurisdiction. The Fathers of Confederation attempted to make these lists exhaustive. However, in order to prepare for the eventuality of a new area of jurisdiction appearing on the Canadian political landscape, they gave the residual powers to the federal government. There have been various challenges to the residual power of the federal government by the provinces through the courts.

The conflict in jurisdiction between the provincial and federal governments has been challenged through various court cases. The main contentions were over who is responsible for the foreign affairs of the country and how much influence the provinces can have. Canada started off as a highly centralized federation but, through Judicial Committee of the Privy Council (JCPC) decisions, more power was devolved to the provinces including clarification of foreign affairs jurisdiction (Anderson 2013, 11). The Constitution Act, 1867 explicitly states that foreign affairs are under the prerogative of the Crown and then by extension are under the authority of the executive of the federal government (Section 132). The evolution of Canadian sovereignty started in 1931 when Canada and the other members of the Commonwealth became subject to the Statute of Westminster. This gave them sovereign statehood, which resulted in them having the ability to conduct their own external affairs. The power was invested in the prime minister and cabinet. The executive’s jurisdiction over foreign affairs was further solidified with Labour
Conventions 1937, where the JCPC ruled that international treaty making power was also part of the executive’s prerogative powers (Martin 1968, 13). The decision in Labour Conventions gave the federal government the ability to negotiate, sign, and ratify international agreements, but the federal government is unable to enact such legislation if the treaty terms fall within provincial jurisdiction (Martin 1968 14, 25). Treaties must turn into law to be upheld. The take away from the case was that “[t]he provinces possess legislative competence in relevant fields but they do not have the right to enter international agreements.”(Martin 1968, 25) The federal government introduced a consultative structure for negotiation that involved the provinces in negotiations under provincial jurisdiction. The decision from Labour Conventions tells us the power of foreign affairs rests with the Canadian executive, the prime minister, and cabinet. Nossal et al. (2015) argues that the most important decision makers are the relevant cabinet ministers and that they in turn influence the prime minister. While the most important ministers for diplomatic decisions are the ministers of foreign affairs and defense, the prime minister has the final say on policy.

Canada has moved towards a more decentralized federation, meaning the provinces have gained more power from the federal government. This has resulted in stronger provinces being involved in international negotiations. Labour Conventions stipulates that the implementation of certain trade policies requires the co-operation of the provinces with the federal government. Section 91 of the Constitution grants the ‘regulation of trade and commerce’ to the federal government. However, through various court decisions this section has been narrowed in scope. The federal government is only able to regulate these types of trade if the good is exported out of Canada (Monahan 2001). Since the JCPC decision, the issue of trade jurisdiction was not raised.
until the late 1980s when two cases came before the Supreme Court that attempted to redefine the ability of the federal government to intervene in provincial areas of jurisdiction.

The issue of provincial and federal jurisdiction over international trade was also challenged in the *R v. Crown Zellerbach* 1988 and *General Motors of Canada LTD. v. City National Leasing* 1989. Both of these cases created new criteria and justification for determining jurisdiction in a trade dispute between the federal government and the provinces. The *Zellerbach* case expanded the meaning of the “Peace, order and good Government of Canada” (POGG) clause of Section 91. The POGG clause has been used to support the federal government’s jurisdiction and role to create international treaties and oversee their implementation. In this decision, the Supreme Court determined that the POGG clause could be used by the federal government as justification to intervene in provincial areas of jurisdiction for matters of national concern. However, the justices were hesitant to create specifics that would allow for severe federal government intrusion into provincial affairs ([1988] 1 S.C.R. 40).

The next case, *General Motors of Canada LTD.*, challenged Section 91 (2). This article addresses the regulation of trade and commerce and whether or not the federal government may have the ability to increase its role in treaty implementation. The Supreme Court created a set of criteria that would help to determine if the federal government could regulate a particular trade ([1989] 1 S.R.C 641). Chief Justice C.J. Dickson, who wrote the unanimous decision, set five criteria that had to be met:

1. the presence of a “general regulatory scheme,”
2. the “oversight of a regulatory agency,”
3. a concern “with trade as a whole rather than with a particular industry,”
4. that “the legislation should be of a nature that the provinces jointly or severally would be constitutionally incapable of enacting,”
5. that “the failure to include one or more provinces or localities in a legislative scheme would jeopardize the successful operation of the scheme in other parts of the country” (Hogg 1996 Constitutional Law of Canada as cited in Brown 2002).
The criteria set very specific conditions, which the federal government must meet in order to justify their intrusion into provincial jurisdiction. However, the Supreme Court did not guarantee the intrusion of the federal government into provincial jurisdiction but instead created limitations on the ability to do so.

At the time of Confederation, the original four provinces were very regionalized and their trade was mostly made up of natural resources. Section 109 of the Constitution granted the four original provinces sole jurisdiction over “[a]ll lands, mines, minerals, and royalties…” This section essentially ensured that the revenues from natural resources would stay in the province (Carins 1992). British Columbia, Alberta, Saskatchewan, and Manitoba were not given control over their natural resources when they first entered Confederation. This came in 1930 when the federal government passed The Natural Resources Acts. This jurisdiction was added to the Constitution in 1982 as Section 92A, which explicitly stated all non-renewable natural resources in the provinces and ‘their development, conservation and management are under provincial jurisdiction’. Section 92A was important because it did not ‘diminish the rights of the federal government to make policy for the resource industries’ (Cairns 1992). The provinces were now able to legislate in areas they were previously precluded from. Section 92A entrenched the existing provincial power of management and conservation of natural resources from Section 109.

The distribution of power in federalism implies that the provinces have sovereignty over certain issues within their provinces. Since Confederation, the strict division of jurisdictions between federal and provincial governments has become increasingly intertwined and blurred. The provinces have the ability to participate in drafting international negotiations when the item up for discussion falls within their constitutional jurisdiction. The presence of provinces in
foreign affairs has resulted in tensions between the federal and provincial governments. This tensions stems from the fact that the federal government has the authority to act but may not always exercise it in the best interests of any individual provinces. The issue of trade jurisdiction has not recently been a salient one but Monahan argues that if it does reach the Supreme Court the judges will most likely side with the provinces (Monahan 2001). The four largest provinces, Ontario, Quebec, British Columbia, and Alberta, are gaining more and more power from the federal government. They have become independent by conducting their own trade missions and forming regional blocks with their state counterparts. Monahan argues that these provinces will continue to grow in strength and will “have the fiscal capacity to act unilaterally without the federal government.” (2001, 25) The provinces are most interested in maintaining their economic prosperity and security.

The constitution and judicial interpretations have led to decentralized authority over natural resources. Canada is a natural resource dependent economy. The provinces have used this dependency, regionalism, and control over natural resources in the creation of their identity (Brown 2002). Kukucha, Brown, and Skogstad show that typically each provincial economy is tied to one or two resources and this is then tied to their provincial identity. When a resource is debated in international trade negotiations, the province most tied to that resource wants to be involved in the negotiations because of the large impact the final agreement could have on their provincial economy. Due to the intense diversification of resources, only certain provinces will be interested in discussing certain trade agreements. The provinces are mostly concerned with protecting their economic and trade interests, but in some cases culture must also be protected. Quebec has been the most active in international agreements, with the intent to protect their unique culture. Each of the 10 provinces has different interests when it comes to trade but all
have a common factor: their imports and exports depend on trade with the United States. In order to properly evaluate the impact that renegotiating NAFTA may have on the provinces, it is important to look at the provinces’ previous roles in consulting with the federal government on international trade agreements and the degree to which the provinces are dependent on the US. This paper will look at Quebec, Ontario, British Columbia, and Alberta. The provinces have been active in lobbying key US legislators, they have varying levels of dependency on the US for both exports and imports, and because they primarily trade natural resources with the US.
Chapter 4: Provincial Engagement in International Trade

4.1 Quebec

Perhaps the most active Canadian province in foreign affairs is Québec. Quebec has a sizeable, geographically concentrated voting block of French Canadians. This is Canada’s largest ethnic group with 31% of the population identifying as French Canadian (Nossal et al. 2015). The biggest cleavage in Canadian society is between English and French Canadians. A report prepared in 1968 by Paul Martin Sr., then Secretary of State for External Affairs in the Pearson Government, addressed this growing cleavage. The report acknowledges “the traditions which both French- and English-speaking Canadians seek to maintain and develop within the fabric of the Canadian federation.” (Martin 1968, 7) The report goes on to suggest that domestically, the government would soon offer services in both official languages so the government should also represent these interests on the international stage (Martin 1968). Part of the summary of the report was that both English and French Canadian’s interests must be met on the international stage in order to project the image of a bilingual country. In addition, the provinces had the legal right to intervene in areas that were under their jurisdiction (Martin 1968). Essentially, if Canada is projecting an image of a bilingual country with a large French speaking population, then they should acknowledge this in international negotiations and agreements. This is most evident when Quebec sends their own ‘Canada-Quebec’ delegation to promote and protect their culture at La Francophonie.

The desire of Quebec to have an international presence is considered para-diplomacy. Lecours (2002) defines para-diplomacy as the “international activity of regional governments.” (92) Not only do regional government have to bring their case forward in a system that is designed for national governments, but they lack legitimacy in the international system and
perhaps may not have the legal capacity to act outside their national borders (Lecours 2002). States themselves are hesitant to allow their regional governments international legitimacy because it could undermine the state’s sovereignty. When para-diplomacy is involved the domestic politics of the state becomes even more important when undergoing international negotiations. The regional government typically engages in foreign affairs when they feel they are the only ones able to best represent their interests (Lecours 2002). Quebec is the most notable example because they “have an important representation abroad, conduct trade missions and entertain a special relationship with France…” to project their nationalist vision on the international stage (Lecours 2002, 93). Canada has become more decentralized, as Kukucha (2009) points out, and as a result the provinces have been able to assert more independence in international affairs.

In regards to the United States, Paquin (2016) argues that historically the US would rather deal with one unified Canadian government. Quebec wants to have a clear presence in Washington separate from the federal government and has attempted this by setting up offices. In order to get their foot in the door, Quebec, since 2001, has placed their relationship with the US higher than their relationship with France. To do this, Quebec has joined or created several partnerships with American states to increase trade and competitiveness (Paquin 2016). Quebec has sought this avenue of creating networks and bilateral relations to overcome the inability to have the same privileged access to resources and information that the Government of Canada has. The United States will have a big impact on the economic future of Quebec due to the fact they are Quebec’s biggest trading partner and investor (Paquin 2016). Even though Quebec has gone off on their own to increase their economic prosperity, the degree to which they can do so is dependent on the amount of leeway the federal government gives them. The federal
government has jurisdiction of foreign affairs and if Quebec ventures too far into the federal government’s jurisdiction then this will increase tensions between the two levels of government. Lecours (2002) argues the degree of tension between regions exerting para-diplomacy and the national government is dependent on the party in power. Kukucha (2009) argues that under Harper’s Conservative Party, provinces were given free reign in dealing with international affairs when they were within provincial jurisdiction. This allowed Quebec to sign bilateral trade agreements. It is hard to say what the Liberal’s stance on provincial involvement will be in international negotiations, but this will be a likely topic of debate when NAFTA is reopened.

Quebec has been vocal about its provincial position on NAFTA. In January 2017, Quebec’s Economy Minister Dominique Anglade discussed Quebec’s intent to seek a seat at the NAFTA negotiating table (Presse Canadienne January 31, 2017). The provincial government has been preparing for NAFTA negotiations. In February, Raymond Bachand was named special advisor to Quebec for NAFTA renegotiations. This appointment is part of Quebec’s plan to “‘take the offensive’ to ensure Quebec’s interests are defended.” (Presse Canadienne. February 12, 2017) Quebec has been active in preparing their province for re-negotiating NAFTA and many provincial officials believe ‘time is of the essence’ (Tomesco, 2017). Finance Minister Carlos Leitao argues that if the uncertainty of resolution that has been associated with softwood lumber also applies to NAFTA negotiations, there could be a trade battle that would hurt Quebec’s economic growth (ibid). Quebec Premier Phillipe Couillard further proved the uncertainty of future negotiations after the Office of the USTR published their list of NAFTA objectives. Premier Couillard stated “[i]t would be extremely unlikely that such a wide, broad list of subjects could be settled in a matter of months (National Post 2017). The Quebec government has not published documents relating to the anticipated NAFTA re-negotiations. However, this
period of waiting until negotiations begin has caused Quebec to take action in various other ways.

4.2 Ontario

Quebec is the most active in foreign affairs when compared to the other provinces. However, this is not to say that other provinces have not shown interest in being active participants. Ontario is the largest Canadian province by population and second largest by area. Ontario’s industry ranges from crops and mining to manufacturing and technology. Ontario leads Canada’s exports with the total amount of shipments reaching over $422 billion CAD in 2016 (Government of Ontario, Ministry of Finance 2017). The majority of these exports go to the United States, Ontario’s largest export partner. For example, in 2011, 51% of all trade across the border can be accounted for by trade with Ontario (Government of Ontario, 2012). Ontario has a population of 13.5 million and 85% of residents live in urban centers. The size of Ontario contributes to their huge negotiating power within the Canadian federation. In order to promote their provincial interests, Ontario has several provincial offices abroad. Today their interests primarily focus on finding new markets for trade and energy and on the ability to diversify trading partners and new customers for energy. To further these interests, the provincial government actively sends trade missions to potential markets. In the past, Ontario has been active in international trade negotiations but typically keeps in line with the federal government more than any other province. Courchene (1998) argues this is because around Confederation, Ontario was the political center of the dominion and their values and policies were very similar to the federal government’s. Since Confederation, the health of Ontario’s economy has been an indicator of the health of the Canadian economy, and so the province’s interests are usually aligned with the federal government’s interests. Introducing NAFTA created a larger trade boom
in Ontario than any other province (Courchene 1998). However, Courchene argues that Ontario was stepping out of the shadows of the federal government in the late 1990s and this can be seen in Ontario’s international activities.

Ontario also adheres to para-diplomacy and promotes their regional interests in the international system. While Quebec focuses on projecting their culture, Ontario wants to secure markets for their trade and energy. Ontario has multiple energy options to trade with the US. Ontario’s electricity as of 2015 consists of 60% nuclear, 24% hydroelectric and 10% natural gas (Ministry of Energy, 2017). Canada has traded electricity with the US for over 100 years. This is because the geographical proximity of the northern US states to the major Canadian electrical producers, Quebec, Ontario, Manitoba, and British Columbia. In 2015 Ontario’s energy exports to the US increased by 20% from 16.7 TW.h to 20.3 TW.h (Government of Canada, 2017). Overall, Ontario exports 80.88% of all exports to the United States and the top commodity that is exported is automobiles at 29.99% (Government of Ontario, Trade, 2017). According to the Canadian Vehicle Manufactures’ Association, one in seven Canadians are either directly or indirectly employed by the automotive industry (CVMA 2011). In 2007 the export of automotive products totaled $70 billion and of that amount $67 billion went to the United States (CVMA 2011). In comparison to other provinces, Ontario has the highest percentage of trade with the US at 60% of total trade. It is clear from the above statistics that Ontario is the most dependent province on US trade. Courchene argues in 2000, “the economic future of Ontario obviously lies in North America…” (168). During this time, Ontario was working on furthering the integration with the US which resulted in weaker integration with the other Canadian provinces (Courchene 2000).
In recent years, the Ontario provincial government has launched trade missions with countries in Asia, South America, and Central America, in attempts to diversify their trade. However, Ontario cannot easily remove itself from the deep trade integration with the US. In February 2017, Ontario premier Kathleen Wynne held the Committee on Ontario-US Economic and Trade Relations where they discussed “progress and provide advice on the implementation of the province’s US engagement strategy.” (Office of the Premier 2017) This strategy primarily focused on how to increase US lawmaker’s awareness of the integrated nature of the Ontario-US economic relationship. Ontario is working hard to make its presence known to US lawmakers.

Another example that demonstrates the importance of the relationship is the fact that Premier Wynne participated in the Council of the Federation’s Mission to Washington D.C. in early June 2017. Ontario is vigorously working to make its presence known in Washington and from past performance will continue to strengthen its relationship with the US while also expanding it trading partners.

Quebec and Ontario share similar views on what to do while waiting for the start of NAFTA negotiations. Both provinces have taken initiatives to ensure their interests are heard in the US. They are laying the groundwork and creating personal relationships with Congress Members, which will potentially give them a head start when negotiations begin. Premier Wynne has also expressed dissatisfaction with waiting for negotiations to begin. In a statement issued by her Office she said “[w]e are not satisfied to take a wait-and-see approach when it comes to any renegotiation of NAFTA.” (Office of the Premier, May 2017) These are clear instances of the provinces going around the federal government to cultivate relationships with lawmakers across the border that will hopefully support the provinces’ place at the negotiating table.
4.3 Resource Rich Provinces

4.3.2 British Columbia

British Columbia has long been called the awkward partner in Confederation. Prior to Confederation, British Columbia was an independent colony and requested a lot of terms be put in place before joining Confederation. One term was that a railroad be constructed to connect the eastern half of the country to British Columbia. When the railroad was not completed in the ten-year time frame, British Columbia threatened to leave. These events caused John A. Macdonald to refer to British Columbia as the ‘spoilt child of the dominion’ (Resnick 2000). Since confederation, BC has seen itself as a distinct region of Canada. Resnick argues this regional distinctiveness comes from the province’s historical development, geographical location, resource economy, and idiosyncratic political traditions. BC has experienced a distance both physically and politically from the federal government. This has caused the people to have more faith in their provincial government to address their concerns. This is the opposite of how Ontarians perceive the federal government. At times, BC has come to resent the federal government because of the lack of involvement BC has had in the Canadian federal government (Resnick 2000). Feldman & Feldman (1984) argue that when an issue between the US and Canada surfaces that involves Ontario, the US retaliates against the western provinces. This was seen in the 1982 softwood lumber disputes that followed the Ontario based issue of acid rain (Feldman and Feldman 1984). The further alienation experienced by BC has resulted in the provincial government negotiating on their own without federal government involvement.

This lack of involvement with the provincial government has resulted in the BC provincial government taking on a greater political presence and seeking out other possible partners. BC has diversified its trade interests to include many countries of the Pacific Rim like
Japan, South Korea, and China. BC’s total exports with Asia totaled $14.6 billion in 2014 (Labrecque 2017). This still diminishes in comparison to BC’s trade with the US. In 2015 BC’s exports with the US were around $400 billion and imports were well over $250 billion (Ministry of Technology, Innovation, and Citizens Services 2017). BC primarily exports lumber, liquefied petroleum, and a variety of other wood products to the US. Softwood lumber has caused the most tension between BC and the US. BC supplies the US with 1/3 of the lumber used in the United States (Ministry of Forests 2002). It is evident that when NAFTA is renegotiated, the issue of softwood lumber will be an important topic for debate between Canada and the US. BC will want to ensure the US government hears its regional interests and that the federal government will not just negotiate a blanket deal for all provinces affected.

BC, much like the above provinces, also appointed a trade representative to the US following Trump’s Inauguration. In February, then Premier Christy Clark appointed David Emerson as BC Trade envoy to the US (Office of the Premier, February 14, 2017). However, unlike Ontario and Quebec who appointed trade advisors to encompass all aspects of NAFTA renegotiation, Emerson was appointed to secure a new Softwood Lumber Agreement with the US. This mandate exemplifies BC’s desire to guarantee their interests will be communicated in Washington. Clark had been vocal about defending BC’s softwood lumber interests in Washington and made it a focal point of the 2017 provincial election campaign. The wild events that unfolded following the election resulted in a new premier, John Horgan, who was sworn in on July 18, 2017. The NDP’s election platform only mentioned the United States once, stating the party’s desire to create a fair deal for softwood lumber (BC NDP Platform 2017). During the election campaign, on June 1, 2017, Horgan said he would travel to Washington in an effort to settle the softwood lumber dispute (Jang & Bailey 2017). However, Horgan also stated that he
would work in consultation with the federal government. It is unclear if, under Horgan, BC
indeed will include the federal government in potential dispute resolution or if BC will follow a
path like Ontario and Quebec without the federal government. Premier Horgan met with Prime
Minister Trudeau for the first time on July 25, 2017. During this meeting the two leaders agreed
“a fair dispute resolution system is essential for any trade deal that Canada signs on to…”
(Rabson 2017). Following Horgan’s meeting in Ottawa he travelled to Washington D.C. to
discuss softwood lumber with various US officials. In D.C. Horgan met with US Trade Secretary
Robert Lighthizer and US Secretary of Commerce, Wilbur Ross, to discuss reaching an
agreement on softwood lumber (Meissner 2017).

4.3.2 Alberta

Alberta has long been a proponent of Western Canada having a strong place within
Canada. The history of western alienation has resulted in Alberta not trusting the federal
government. Instead, they have gone ahead with promoting their own trade interests. Alberta
advocates for a more decentralized federation to allow the province more independence in their
political affairs. J. R. Mallory argues that Ontario and Quebec have a higher status in the
federation due to their geographical and population size, which gives them more bargaining
power (as cited in Morton 2005). So, it can be further argued that Alberta is not just fighting for
more decentralization but for equality between all provinces in the federation. Premier Rachel
Notley has reiterated the desire of the Alberta government to “work closely with the government
of Canada and without other provinces to defend Canadian interests, and of course Albertan
interests…” (CBC News 2016). At the center of Alberta’s interests is their desire to maintain
their energy market with the US.
Alberta’s first commercial production from the oil sands began in the late 1960s. The huge economic boom that came from the oil sands gave the province an increased economic bargaining power with the federal government. From 1990 to 2003 Alberta’s economic growth was 14% higher than any other region in Canada (StatsCan 2009). The United States receives 90% of Alberta’s international exports (Ibid). Alberta’s main source of revenue is the oil sands. The primary commodity traded with the US is crude petroleum, 42.3% of exports, and liquefied petroleum, 34.9% of exports (Kukucha 2008). Alberta’s dependence on trade with the US is exemplified by the dominance of petroleum as an export when compared to its third highest export with the US: ethylene at 3.8% of exports (Kukucha 2008). There are high stakes for Alberta when NAFTA negotiations happen because bad terms coupled with the fall of oil prices could lead to disaster for Alberta’s economy.

Premier Notley hosted the Council of the Federation’s summer meeting on July 17-19, 2017. Here the Premiers (minus the BC Premier) discussed the importance trade with the US has to each of their provincial economies. The press release also mentioned that the increased involvement the provinces had during the CETA negotiations would likely continue (The Council of the Federation 2017, July 18). It was not mentioned whether the provinces would be at the negotiating table with the federal government but the document expressed a clear desire to do so.
Chapter 5: Analysis

All of the above-mentioned provinces are anticipating renegotiating NAFTA. The only question is when the negotiations will start. On May 18, 2017 the newly sworn in United States Trade Representative, Robert Lighthizer, wrote to Congress on behalf of the Trump Administration to officially notify Congressional leaders of President Trump’s intentions to initiate negotiations. The US’s Trade Act of 1974 stipulates that in order for the US to renegotiate any international free trade agreement the executive branch must give notice to Congress of its intent to do so. Once notice has been given, Congress has a 90-day consultation period before formal talks can begin. This means negotiations could be begin as early as August 16, 2017. On the White House website, the Trump Administration views renegotiating NAFTA from a purely protectionist point of view. The White House’s only statement on NAFTA does not focus on promoting better international relations with Canada or Mexico but solely on protecting US markets, specifically it notes:

President Trump is committed to renegotiating NAFTA. If our partners refuse a renegotiation that gives American workers a fair deal, then the President will give notice of the United States’ intent to withdraw from NAFTA. (The United States Government 2017)

On July 17, 2017, the Office of the United States Trade Representative (USTR) released their Summary of Objectives for the NAFTA Renegotiation. The document identifies what President Trump claims to be as the shortfalls of the agreement and also presents the President’s commitment to fix the ‘injustices’ against the American people. The document also expresses the desire of the Administration to ensure all their objectives will lead to “a seamless transition to the new NAFTA.” (Office of the USTR 2017) Many of the objectives in the document focus on the US ‘getting the best deal possible’ when it comes to trade deficits, regulatory practices, labour, the environment, and dispute settlement. The most interesting objective in the USTR is the call
for the elimination of the NAFTA Chapter 19 dispute settlement mechanism (Office of the USTR 2017, 14). In previous softwood lumber disputes the Chapter 19 mechanism was used to settle the dispute. This objective could lead to heavy provincial involvement when it is debated during negotiations. Premier Horgan commented during his first meeting with Prime Minister Trudeau that he agreed with the Prime Minister that “[i]n order to resolve disagreements, you need a dispute mechanism.” (Harris 2017) In the Summary of Objectives document there are no other objectives that are directly targeted to the province-specific resources as discussed in the previous chapter. This differs from the issues President Trump has discussed in the media, such as dairy regulation and softwood lumber. The lack of province specific content suggests that the Trump Administration does not want to have the provinces at the negotiating table.

The Canadian government, in comparison, views the renegotiation as a way to modernize the agreement. Minister of Foreign Affairs Chrystia Freeland has voiced the federal government’s position as one to look at these negotiations as a way to modernize NAFTA and seek a better deal for all involved. She also has expressed the desire to consult all Canadians that the negotiations will affect (McGregor 2017). Canada, like the US, has not released any formal position on renegotiation but just broad statements. The Canadian Ambassador to the US, David MacNaughton, has indicated that he and the Canadian government are prepared to negotiate at lengths to ensure the final agreement will “be good for Canadians.” (National Post, 2017) MacNaughton also noted that it would be beneficial to all if these negotiations happened quickly “but having said that we’re not going to rush into a bad deal.” (Ibid) These statements by MacNaughton, on behalf of the federal government, give insight into the need to ensure the final agreement will benefit Canada as a whole. The federal government is looking at how the negotiations and the eventual end agreement will impact the Canadian economy.
Prime Minister Trudeau gave the keynote address to the National Governors Association (NGA) on July 14th, 2017. This speech focused on the importance of NAFTA to the Canada-US relationship. Trudeau emphasized how much the individual states rely on Canada to keep their economies strong and that “Canada is the biggest and best customer to the US.” (C-SPAN 2017) If the individual US states were to engage in protectionist policies it would hurt their respective economies. A key line from the speech emphasized the need to make borders thinner for trade and not thicker. Trudeau used words like ‘strengthen,’ ‘make better,’ and ‘maintain’ when he described the Canada-US relationship and NAFTA. The federal government has not been forthcoming when it comes to their objectives for renegotiating NAFTA. This speech came days before the US Trade Representative, Lighthizer, published the Trump Administration’s negotiating objectives. This is a very strategic decision that comes one month before the 90-day Congressional consultation is scheduled to end. This is possibly a strategy by the Canadian government to help place Canada in a favorable light with US Governors; who then could in turn vocalize their support for Canadian trade with their citizens and then their state elected members in Washington. Due to the timely nature of this topic, the majority of information about government positions has come from reporter interviews or hearsay of what has happened behind closed doors. This period of limbo makes it hard to find official statements on government positions, so one has to infer based on these interviews what the position is. This tactic fits in with Bow (2009), who says that during negotiations between the two countries, the US will lay out their objectives prior to negotiations. Canada is then left to work within the US’s demands because the US has more power within the relationship.

Many have argued that Canada has little leverage when it comes to the US. The provinces have started to increase their presence in US politics to try to increase their leveraging power.
They have done so by influencing and leveraging key US legislators and bureaucrats who will be involved in the negotiations. The Premier of Ontario was one of the six premiers to participate in the Council of the Federations Mission to Washington where they discussed trade and business issues related to NAFTA. It was during this mission the Premiers met with various senior US politicians including: Stephen Schwarzman, Chair of President Trump’s Strategic and Policy Forum, Agriculture Secretary Sonny Perdue, Senator Lisa Murowski, Chair US Senate Committee on Energy and Natural resources, Office of the USTR, and the US Department of Homeland Security (The Council of the Federation 2017, June 8). These various meeting with key US legislators are attempting to place Canada in a favourable light for when actual negotiations start. The Premiers also met with several Members of Congress to notify them about trade issues, such as softwood lumber (ibid). Provinces such as Quebec, Ontario, and BC have prepared for negotiations by naming trade negotiators. Ontario has made great efforts in its extensive lobbying. Premier Wynne was able to get New York State to drop a buy-American provision from its budget. This is a remarkable example of how influential Canadian provinces can be. Afterwards, Wynne commented “in free trade agreements there’s always give-and-take, in terms of particular sectors and particular jurisdictions… That’s why it’s so important that [the provinces] be at the table…” (Cross 2017) This quote exemplifies, from the provinces’ view, why they will be needed at the NAFTA negotiating table. On one hand, it is beneficial to have the provinces in the same room during negotiations since it would reduce the amount of time it would take for the federal government to consult with each of the provinces. However, it is harder to come to an agreement with 11 voices at the table as opposed to one.
5.1 Mechanism for Provincial Involvement: C-Trade

Concurrently with the constitutional overview and judicial review, there have also been developments in the involvement of the provinces in international trade negotiations with the institutionalization of consultation mechanisms. Scholars, such as Kukucha, Brown, Skogstad, and Anderson, cite the 1973 Tokyo Round of the General Agreement on Tariffs and Trade (GATT) negotiations as the first instance that there was a more formal mechanism for the federal government to receive provincial input (Kukucha 2008). During the negotiations there were sectorial negotiations on fisheries, resource based products, and agriculture. All of these required provincial input because they fell within provincial jurisdiction (Kukucha 2008). In order to implement any of the decisions from the meetings, the federal government would have to consult with the provinces. However, the federal government was also bound by the federal state clause of the GATT agreement which stipulated that in order to negotiate a binding international agreement, each state would have to have the support of their sub federal units (Kukucha 2008). Anderson argues that it was because of the importance of the federal state clause that Canadian officials went to great lengths to ensure their provincial counterparts were well informed throughout the proceedings (2001). Since the Tokyo Round there has been a push for more provincial involvement in international trade negotiations.

In the 1980s the potential of having a Canada-US free trade deal began to percolate and the provinces jumped at the chance to be more involved. Following the conclusions of the MacDonald Commission, Brian Mulroney’s Progressive Conservatives were elected with a minority government. The newly formed government began to negotiate a free trade deal with the US in 1986. The precedent for involvement of the provinces in trade negotiations was set during the Canada-United States Free Trade Agreement (CUSFTA). During negotiations, the
federal government would consult with the provinces prior to meeting with the US. These meetings would include consulting the provinces on:

- setting and approving the Canadian mandate, the extent of consultation and information sharing, whether provinces would be ‘at the table’ or ‘in the room’ during negotiations, the extent of decision-making involvement of premiers at key points in the negotiations, and the extent of provincial involvement in preparations for the negotiations (Delagran 1992, 20).

The provinces were actively consulted during the CUSFTA but they were not at the table or able to give direct input to the federal government (Paquin 2013). The stakes were high for the provinces in negotiating a trade deal due to the extreme dependence of the provinces on the US for trade. In 1987, an agreement was reached and signed by both the US and Canadian governments. However, before the treaty could become law it had to be passed by the Canadian Parliament and the US Congress. The issue of free trade with the US caused and defined the 1988 federal election where the Progressive Conservatives supported free trade while the Liberals were against it. The Progressive Conservatives won the election and passed the CUSFTA, which entered into force on January 1, 1989.

Following the 1988 federal election the federal government recognized the importance of provincial involvement and created a consultative mechanism. The first mechanism was the Continuing Committee for Trade Negotiations (CCTN). Following the CUSFTA and the NAFTA, the international system experienced an increase in globalization. This led to many free trade agreements being negotiated and signed by Canada and increased the frequency of provincial involvement. Throughout this time the CCTN went through several iterations and is now called the Federal-Provincial-Territorial Committee on Trade (C-Trade). When a potential international trade deal is being negotiated, the provinces will meet with federal representatives four times a year to discuss the potential deal (Kukucha 2008). Skogstad argues that despite these mechanisms for formal consultation, not all provincial advice is considered (2008). This is
supported by some provinces, which argue these meeting are more a mechanism of information sharing rather than one of consultation (Kukucha 2008). The meeting’s agenda is set by the federal government and is not given out until a few days prior, which dramatically reduces the amount of preparatory time the provinces have. There is also no guarantee that the federal government has to consider and negotiate based on the provinces’ desires. Quebec and Alberta have proposed alternative mechanisms for provincial involvement in international trade negotiations. Quebec would prefer a European Union style system where the provinces are able to participate in negotiations by sending their own representatives. Alberta would like to see overall a more institutionalized role for the provinces (Kukucha 2008). Kukucha argues that the federal government is unlikely to accept any proposal that will reduce federal autonomy in negotiating international trade deals or restrict Ottawa’s ability to protect Canada’s national interests. Since this paper was written there has been a change in government however the premise is still relevant to the current government. The current government under Prime Minister Justin Trudeau Ottawa will increase provincial involvement if there is external pressure to do so, as there was in the CETA negotiations.

5.2 CETA: Lessons for NAFTA

C-Trade is the official federal provincial consultative mechanism. An earlier version of the mechanism was used during NAFTA. However, during the CETA negotiations a different approach was taken. CETA negotiations were rejuvenated in 2009 following a failed attempt of the Trade and Investment Enhancement Agreement (TIEA) between Canada and the European Union (EU) in 2004-6. The TIEA failed because the items being discussed were under provincial jurisdiction and the provinces were not consulted until late in the negotiations. In May 2009,
Quebec Premier Jean Charest reopened the idea of a Canada-European trade deal to promote closer ties with Europe. The EU required the provinces to be directly involved this time because many of the issues that were up for discussion had direct provincial involvement similar to TIEA. This was the first time the provinces actually sat at the negotiating table for an international trade agreement. In the CETA negotiations, liquor sales, agriculture, procurement, and labour mobility were major areas under discussion. Quebec took advantage of this new position in negotiations by arranging several informal bilateral meetings between Quebec’s chief negotiator and the chief European negotiator (Paquin 2013, 551). This new mechanism was in line with how Quebec believed provincial consultation should be done but the federal government saw it as giving up too much control (Paquin 2013).

Many scholars agree that CETA appears to be an isolated example when compared to provincial involvement in trade negotiations that took place prior and after. It is very unrealistic to think that the CETA way of negotiating will continue with other free trade agreements. For example, the Canada-South Korea Free Trade Agreement had very little provincial involvement. In the case of CETA, the other party requested the provinces be involved from the beginning, but the negotiations of CUSFTA and NAFTA showed the provinces were consulted away from the negotiating table. The terms of CETA dictated how dependent the EU was on the provinces to ensure the deal was made. This could also be true when re-negotiating NAFTA. Now that the provinces have gotten a taste of what it is like to be sitting at the negotiating table, they may push harder for the federal government to give them a spot. It is unclear whether or not the US will support provincial involvement at the negotiating table. Based on the history of the Canada-US relationship it is unreasonable to hypothesize that the US will welcome the provinces.
The provincial role in international trade agreements has not been consistent. The provinces follow similar patterns and types of consultation, but there is not a formal mechanism in place. It appeared C-Trade was a step towards the institutionalization of such a mechanism but the CETA negotiations changed that dynamic. The reason that a mechanism for provincial consultation during international trade negotiations can fluctuate is because the constitution does not provide a concrete mechanism to dictate provincial involvement. Perhaps CETA is an indication that the provinces will become more involved in future trade negotiations, as the issues that are being discussed will continue to intrude more and more into provincial jurisdiction. However, it is important to note that regardless of the amount that the provincial input mechanisms expand, constitutionally, the federal government will always have final say. This paper has shown that CETA was an isolated example of provincial trade negotiations involvement. Further, the provinces do not have a place within the Canada-US relationship due to the sheer power of the US. Canada is not in a position to ask more of the US during negotiations. If Canada pushes the US too far it could result in the US withdrawing from NAFTA. The Canadian federal government has, and will continue to be, the sole manager of Canada’s place in the relationship.

5.3 What’s Next?

Certain provinces have worked extremely hard to position themselves favourably with US lawmakers at both state and federal level. Based on past provincial performance in trade negotiations, literature, and the current political environment, provinces’ positions can be hypothesized. Quebec will take the same approach they took during CETA. They will be outspoken about preserving Quebec’s distinctness and will do so by perhaps engaging in bilateral
negotiations with key members of the US delegation. Ontario will also be quite forward when it comes to energy and the auto industry. Premier Wynne has positioned Ontario in a promising position with key US members through her numerous lobbying efforts. British Columbia may be lagging behind in comparison, due to the surprising events surrounding the provincial election. The new premier will have a very short time to organize and prioritize BC’s agenda for negotiations. Alberta has been relatively silent on NAFTA negotiations to date; they have no provincial trade representative for NAFTA. However, it is clear that Alberta will use its vast oil and gas resources to ensure their voice is heard. Each province will be looking out for their own economic interests at the expense of other provinces. Ontario and Quebec, due to their size and power within the federation, would be able to get more of what they want if the provinces were at the negotiating table. However, it would come at the expense of the smaller and weaker provinces that have not been able to successfully position themselves favourably. Only the federal government can be the negotiator on behalf of all of Canada. The federal government will be looking for an agreement that will benefit Canada as a whole and not at the expense of the smaller and weaker provinces. Overall, the federal government has the tough job of trying to manage all the regional interests to keep the Canadian economy strong. Disagreement between the various provinces or between a province and the federal government could harm the overall Canadian economy. It will be tough for the federal government to rein in the provinces, especially when they were used to having a lot more freedom during the CETA negotiations.
Chapter 6: Conclusion

Based on the evidence presented, this paper concludes that the provinces are highly unlikely to be present at the NAFTA negotiating table. The US executive branch has not expressed any interest in having more than one Canadian negotiating representative present. The dominance of the US in the Canada-US relationship will allow the US to set the terms of the negotiations. Canada does not have the economic or political might to challenge the US and therefore must present a united front. The Canadian federal government has been facing challenges by the provinces over varying interests and jurisdictions. The provinces have been looking to increase their involvement in international trade negotiations since the CETA negotiations and have indicated their desire to have the same level of involvement as they had during the CETA negotiations. The provinces have been active in trying to recreate a CETA like negotiating environment by lobbing key US legislators because they think this will get them a seat at the table. In the US, the power to negotiate treaties lies with the executive branch. However, due to the areas NAFTA covers, most notably trade and commerce, Congress also has clearly defined jurisdiction that allows them to be involved in negotiations and consultations. These personal relationships could help influence the US federal government to ask the Canadian government to have certain provinces at the table. This would potentially allow each province the chance to get what they specifically want out of the negotiations: the US would invite them to the table. The provinces have been smart in lobbing the US federal government because they know the US holds the most power in the Canada-US relationship. However, the US executive hold the power when deciding who can be invited to the table.

The provinces will be forced to revert back to the C-Trade mechanism to determine their level of consultation during negotiations. Therefore the provinces will have to present a united
front to the federal government to maximize their involvement but once negotiations start each province will place its own interests above any other province. While some issues may cover several provinces’ interests, such as softwood lumber, each province will still be individualistic. In the end the provinces may place their regional interests above what is best for Canada as whole.

Overall, the federal government needs to keep NAFTA intact in order to keep the Canadian economy strong. The potential fighting between provinces and the federal government could harm negotiations and result in a far worse off agreement. The abnormal provincial involvement during CETA was an isolated example and the provinces have gotten used to this level of involvement. If this level of involvement were to happen again with NAFTA, the larger provinces (Ontario, Quebec, BC, and Alberta) would make concessions that would harm the entire country. The provinces would put their own provincial economies above the Canadian economy.

Further research on provincial involvement in international trade agreements will likely take place once the NAFTA negotiations have concluded. One particular area of interest could look to see if any of the provincial lobbying of US legislators was able to impact the negotiations of the US executive. This would help create a fuller picture of the provinces’ place within the Canada-US relationship. A second area of interest could look to see if the individual provincial lobbying of key US officials increased or decreased their leverage with the Canadian federal government during NAFTA negotiations. Finally, future scholars should look to see if the individualist interests of each province affected their respective relationships with the Canadian federal government.
Bibliography


